

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JIMMY LEE NELSON,

Petitioner,

vs.

ATTORNEY GENERAL, *et al.*,

Respondents.

3:06-cv-00129-LRH-VPC

ORDER

This closed represented habeas matter under 28 U.S.C. § 2254 is before the Court on a pauper application (#55) and, *inter alia*, a motion (#56) to reopen filed by petitioner in proper person. In the motion to reopen, petitioner claims that he had a viable claim of actual innocence to overcome the untimeliness of his petition but federal habeas counsel did not pursue the issue due to alleged ineffective assistance of counsel.

The pauper application will be denied as unnecessary, as the Court previously granted petitioner pauper status in a prior order (#8). Should the Court later consider appointment of replacement counsel, the Court will take the financial materials in the current pauper application into account.

On the current record, petitioner is represented by counsel and may not submit papers in proper person. However, petitioner's allegations in support of the motion potentially may lead counsel to file a motion with respect to the representation. The Court will provide a period of time within which counsel may seek any relief appropriate to the circumstances with regard to the representation. The Court further will direct the Clerk to renotice the Attorney General given the Court's understanding that current counsel of record for respondents possibly may no longer be with the Attorney General.

1 IT THEREFORE IS ORDERED that petitioner's application (#55) to proceed *in forma pauperis*
2 is DENIED as unnecessary given that the Court previously granted petitioner pauper status in #8.

3 IT FURTHER IS ORDERED that petitioner's counsel shall have **fourteen (14) days** from entry
4 of this order within which to file a motion, if any, requesting relief appropriate to the circumstances with
5 regard to the representation. Any motion to withdraw filed must be served by mail on petitioner in
6 proper person at his current address in addition to electronically on opposing counsel.

7 IT FURTHER IS ORDERED that the Clerk shall add Catherine Cortez-Masto as co-counsel for
8 respondents and shall generate or regenerate notices of filing of this order and ##55-58 to Attorney
9 General Cortez-Masto.

10 IT FURTHER IS ORDERED that, within **seven (7) days** of entry of this order, counsel for
11 respondents shall file an updated notice of appearance herein reflecting current counsel for respondents.
12 No other response is required from respondents until further order of the Court.

13 IT FURTHER IS ORDERED that the Clerk shall send hard copies of this order and of ## 55-58
14 by mail to petitioner **Jimmy Lee Nelson, #64886, Northern Nevada Correctional Center, P.O. Box**
15 **7000, Carson City, NV 89702-7000**, and the Clerk shall clearly reflect on the docket sheet that same
16 has been done. That is, a declaration in the docket entry that "copies have been distributed pursuant to
17 the NEF" without any indication either in the electronic receipt for the notice of electronic filing or the
18 docket entry that a hard copy also was sent to petitioner in proper person by mail will **not** suffice. The
19 record needs to clearly and affirmatively show that a hard copy notice of this order was sent by mail to
20 petitioner in proper person.

21 This matter remains closed. Nothing herein signifies that the matter has been reopened, as the
22 motion to reopen remains for consideration following resolution of any representation issues.

23 DATED this 5th day of June, 2012.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE